

1 FAISAL M. ZUBAIRI (SBN 244233)
zubairi.faisal@dorsey.com
2 ISAAC M. GABRIEL (SBN 325008)
gabriel.isaac@dorsey.com
3 NAVDEEP K. SINGH (SBN 284486)
singh.navdeep@dorsey.com
4 JESSICA M. LEANO (SBN 323677)
leano.jessica@dorsey.com
5 DORSEY & WHITNEY LLP
600 Anton Boulevard, Suite 2000
6 Costa Mesa, CA 92626-7655
Telephone: (714) 800-1400
7 Facsimile: (714) 800-1499

8 Attorneys for Defendant
SPROUTS FARMERS MARKET, INC.
9
10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**
13

14 ROBERT COHEN, individually and on
behalf of all others similarly situated,

15 Plaintiff,
16

17 vs.

18 SPROUTS FARMERS MARKET, INC.,
and DOES 1 through 10, inclusive, and
each of them,

19 Defendants.
20
21
22
23
24
25
26
27
28

CASE NO.: 8:22-cv-01837 DOC (DFMx)

Honorable David O. Carter
Courtroom 10 A

**NOTICE OF MOTION AND MOTION
OF DEFENDANT SPROUTS
FARMERS MARKET, INC. TO
DISMISS PLAINTIFF'S COMPLAINT**

[Filed concurrently with Memorandum of
Points and Authorities, Declaration of
Brandon Lombardi, and Proposed Order]

Date: December 12, 2022

Time: 8:30 a.m.

Place: Courtroom 10A

411 W. 4th Street

Santa Ana, CA 92701

Complaint Filed: September 6, 2022
Action Removed: November 7, 2022
Trial Date: None Set

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 12, 2022 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 10 A of the above-entitled court located at 411 West 4th Street, Room 1053, Santa Ana, CA 92701, before the Honorable David O. Carter, Defendant Sprouts Farmers Market, Inc. (“Defendant” or “Sprouts”) will, and hereby does, move this Court for an order dismissing the Complaint filed by Plaintiff Robert Cohen (“Plaintiff”) in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(2) on the following grounds:

1. Plaintiff’s Complaint, including both causes of action alleged therein, fail to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) because the conduct alleged—that Defendant printed the first six and last four digits of Plaintiff’s credit or debit card numbers on his receipts—does not constitute a knowing or negligent violation of the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681(c)(g)(1) (“FACTA”). The display of the first six and last four digits of a card number does not display any personal information sufficient to support a FACTA violation.

2. Plaintiff’s claim for knowing FACTA violations (Second Cause of Action) fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) because the boilerplate allegations speculating that Defendant knew of the existence of FACTA but did not take sufficient steps to ensure no violations would occur are insufficient to plead the required willfulness.

3. Plaintiff’s claim for negligent FACTA violations (First Cause of Action) fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) because Plaintiff fails to plead that he suffered any damages caused by Defendant’s conduct, and therefore cannot establish the elements of causation or damages required to sustain such a claim for negligence.

4. The Court lacks personal jurisdiction to decide the claims for willful and negligent FACTA violations that Plaintiff seeks to assert on behalf of unnamed non-California class members, pursuant to Rule 12(b)(2), because Defendant is not subject to

1 California's general jurisdiction, nor can there be subject matter jurisdiction over these
2 class members' claims based on alleged wrongful conduct occurring entirely outside of
3 California.

4 This Motion is based on this Notice of Motion and Motion, the contemporaneously-
5 filed Memorandum of Points and Authorities, Declaration of Brandon Lombardi; all other
6 pleadings, papers, and records on file in this action; and such other written and oral
7 arguments as may be presented to the Court at the hearing on this matter.

8 This Motion is being made following the conference of counsel pursuant to Local
9 Rule 7-3, which took place on October 19, 2022. The parties were unable to resolve the
10 issues raised herein.

11
12 DATED: November 10, 2022

DORSEY & WHITNEY LLP

By: /s/Faisal M. Zubairi

FAISAL M. ZUBAIRI

ISAAC M. GABRIEL

NAVDEEP K. SINGH

JESSICA M. LEANO

Attorneys for Defendant

SPROUTS FARMERS MARKET, INC.

CERTIFICATE OF SERVICE

***Robert Cohen v. Sprouts Farmers Market, Inc.,
United States District Court for the Central District of California
Case No.: 8:22-cv-01837 DOC (DFMx)***

I hereby certify on November 10, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California by using the CM/ECF System.

Participants in the case who are registered CM/ECF Users will be automatically served by the CM/ECF System.

DATED: November 10, 2022

DORSEY & WHITNEY LLP

By: /s/Faisal M. Zubairi
Faisal M. Zubairi